IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2475 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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VIMALBHAI PARSHOTTAMBHAI KATHIRIYA - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR BM MANGUKIYA for Applicant(s) : 1,
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2,
MR MEHUL H RATHOD for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/07/2007

ORAL JUDGMENT

1. By way of this application under Section 482 of the Criminal Procedure Code, the petitioner –

original accused No.3 – Contractor of Gujarat Water Supply and Sewerage Board (for short “the Board”) has prayed for an appropriate order to quash and set aside the Criminal Case being Criminal Inquiry No. 3 of 2006 pending in the Court of learned Special Judge, Amerli for the offence punishable under Sections 406, 409, 420, 465, 468, 471, 477-A and Section 120-B of the Indian Penal Code (for short “IPC”) read with Section 17, 12 and 13(c)(d) of the Prevention of Corruption Act, 1988 (for short “the P.C. Act, 1988”).

2. A Criminal complaint being Criminal Inquiry No. 3 of 2006 is filed by the Executive Engineer of the Board in the Court of learned Special Judge, Amerli against the petitioner and two other co-accused for the offence punishable under Sections 406, 409, 420, 465, 468, 471, 477-A and Section 120-B of the IPC read with Section 17, 12 and 13(c)(d) of the P.C.Act, 1988. It is alleged in the said complaint that original accused No.1 was the Deputy Executive Engineer and original accused No.2 was also Officer of the Board and the petitioner herein – accused No.3 was contractor. It is further alleged

in the complaint that the work order was given in favour of the petitioner without following any procedure and without inviting tenders. It is also further alleged in the said complaint that all the accused in connivance with each other and with a view to defraud the Board and with a view to misappropriate Rs.28,48,723/- have created bogus bills; and that the petitioner herein – accused No.3 has not done any work, the Officers of the Board have created bogus bills by noting false measurements and accused Nos. 1 and 2 have passed the bill in favour of the petitioner. It is alleged in the complaint that bogus documents have been created and false accounts have been prepared and for the work that was not carried out, it was recommended to pay the bills. That the learned Special Judge, Amerli by his order dated 19.10.2006 passed an order to send the matter to the Police Inspector (ACB), Amerli for making inquiry under Section 156 (3) of the Criminal Procedure Code (for short “CrPC”) . Being aggrieved and dissatisfied with the same, the petitioner – original accused No.3 – Contractor has preferred the present application under Section 482 of the CrPC to

quash and set aside the aforesaid complaint.

3. Mr. Mangukiya, learned Advocate appearing on behalf of the petitioner has submitted that as there was emergency work related to flood reliefs, procedure as per the manual was not required to be followed before inviting tenders and therefore, tenders were not invited considering the emergency work and it cannot be said that any offence has been committed by all the accused persons. He has further submitted that even the complaint is based beyond the records. He has submitted that even the pipes were damaged and the same is not disputed. It is further submitted that at the most, it can be said to be irregularity by the Officers. It is further submitted that even the draft tenders papers was signed by the Executive Engineer who has approved the work under the work order. Mr. Mangukiya, learned Advocate appearing on behalf of the petitioner has relied upon the documents annexed with the application in support of his submission that the petitioner has not committed any offence as alleged. Therefore, it is requested to allow the present application and quash and set aside the impugned

complaint.

4. On the other hand Shri Mehul Rathod, learned Advocate appearing on behalf of the Board has submitted that all the accused in connivance with each other i.e. Officers of the Board as well as the Contractor have created false documents, prepared bogus bills and have tried to misappropriate Rs.28,48,723/- by noting false measurements. It is further submitted that though the work was not carried out by the petitioner, all the three accused in connivance with each other prepared bogus bills as if the work has been carried out by the petitioner; and that the Officers of the Board i.e. Original accused Nos. 1 and 2 have recommended to pass the bills and make payment. It is submitted that the Officers of the Board had retired and as such more than fifteen complaints are filed against original accused Nos. 1 and 2. It is further submitted that the averments and allegations in the complaint make out a *prima – facie* case for further investigation and it discloses cognizable offence which are further required to be inquired / investigated. It is also further submitted that at this stage no other

documents are required to be considered /seen and what is required to be considered is the avements / allegations in the complaint. It is also further submitted that the submissions which are made on behalf of the petitioner are his defences and the same are required to be considered at the time of trial by the learned trial Court and this is not a fit case to stall investigation at threshold. Therefore, it is requested to dismiss the present application.

5. Shri R.C.Kodekar, learned Additional Public Prosecutor while adopting the submissions made on behalf of the Board has further submitted that in the facts and circumstances of the case more particularly when the offence alleged are also under the P.C.Act, 1988, it is requested not to exercise powers under Section 482 of the Criminal Procedure Code at this stage and it is requested to vacate the *ad-interim* relief granted earlier and allow the Investigating Officer to investigate the case and submit the report before the trial Court. It is submitted that even the learned Trial Court has also passed an order for investigation / inquiry under Section 156(3) of the

Criminal Procedure Code and after investigation appropriate report will be submitted to the Court by the Investigating Officer. It is further submitted that if the case is further investigated and investigation is carried no prejudice will be caused to the petitioner.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. As stated above, the allegations against the petitioner and other co-accused are serious in nature. The allegations are with regard to creating bogus bills by noting false measurement and creating bogus documents / bills and trying to misappropriate Rs.28,48,723/-. The allegations in the complaint are that though the work was not carried out by the petitioner – contractor, bills were prepared by noting down false measurements as if the work has been carried out and original accused Nos. 1 and 2 i.e. Officers of the Board sanctioned the bills and recommended to make the payment. Thus, allegations are not only for the offences punishable under Indian Penal Code but for the offences punishable under the

P.C.Act, 1988. It is the contention on behalf of the petitioner that in fact pipes were damaged and work order was issued and as per the manual in case of emergency such as flood relief procedure for awarding contract is not required to be followed. The learned Advocate appearing on behalf of the petitioner has tried to rely upon the documents in support of his submissions that the petitioner has not committed any offence and as such agreement was entered into between the petitioner and the Board. It is required to be noted that all those documents which are relied upon by the learned Advocate appearing on behalf of the petitioner are prepared by the Officers against whom allegations are made. The submission made on behalf of the petitioner are all his defence and the documents annexed with the application are not required to be seen at this stage. What is required to be considered at this stage is the averments / allegations in the complaint and whether it discloses *prima-facie* case making out cognizable offence and whether the same is further required to be investigated or not.

8. As held by the Hon'ble Supreme Court in the

case of ***State of Orissa and Anr. V/s. Saroj Kumar Sahoo*** reported in *(2005) 13 SCC 540*, exercise of power under Section 482 of CrPC is the exception and not the rule. It is also further held and observed that while exercising the power under Section 482 of CrPC, the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is further held that inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. It is also further held by the Hon'ble Supreme Court that Section 482 is not an instrument handed over to an accused to short-circuit a

prosecution and bring about its sudden death. The inherent power should be exercised sparingly and that too in the rarest of rare cases.

9. In the instance case, investigation is not completed, the learned trial Court has passed an order for inquiry under Section 156(3) of CrPC and has directed the Police Inspector, ACB, Amreli for making inquiry and at that stage, the petitioner has approached before this Court. Now looking to the averments and allegations in the complaint, it cannot be said that the allegations in the complaint taken at its face value and accepted in their entirety do not constitute offences as alleged. On bare reading of the complaint and avements, it cannot be said that no case is made out for further investigation and the complaint is required to be quashed at threshold. If the complaint is further investigated no prejudice is likely to be caused to the petitioner. It is also further required to be noted that the allegations are not only against the petitioner but also against the Officers of the Board who have in connivance with each other have created bogus bills, false documents and the allegations are for the offences punishable

under the Prevention of Corruption Act over and above the allegations for the offences punishable under Indian Penal Code. The submissions made on behalf of the petitioner are all his defences which are not required to be considered at this stage and stall the investigation. It is also required to be noted that there are more than fifteen complaints filed against the Officers of the Board and the contractor and in the last days of retirement, the Officers have committed aforesaid offence. The documents which are annexed to the application and relied upon by the petitioner are not required to be considered at this stage. At this stage what is required to be considered is the averments/allegations in the complaint and whether it discloses cognizable offences or not, for which further investigation is required or not. On bare reading of the complaint it discloses cognizable offences which are further required to be investigated. Looking to the allegations in the complaint this is not a fit case to exercise inherent power under Section 482 of the CrPC.

10. For the reasons stated above, the

application fails, requires to be dismissed and accordingly it is dismissed. Notice discharged. Ad interim relief granted earlier stands vacated forthwith.

[M.R.Shah, J.]

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